

Reply to Office action of 09 April 2007

REMARKS/ARGUMENTS

Information Disclosure Statements

Applicant respectfully requests that the Examiner consider and enter references A4, A44, A46, B7 and B13 in the Information Disclosure Statement (IDS) filed on March 16, 2005, or that the Examiner explain why these references have been lined through.

Interview Summary

Applicant's counsel greatly appreciates the courtesy extended by Examiner Pellegrino in granting an interview.

In the interview, Examiner Pellegrino and Applicant's counsel, Mr. Cameron Kerrigan, Dr. Song Zhu, and Dr. Gloria Gusler, discussed the rejection of claim 6 under 35 U.S.C. 102 over Brandau et al., U.S. Patent 6,709,379. The Examiner suggested claim 6 would be more clear if claim 6 specified that the ceramic material and oxide layer were different distinguishable materials. After careful consideration of the interview and comments made therein, Applicant has amended claims as follows:

Description of amendments

Claims 6-46 are pending in the application. Claims 9-21, 24-26 and 30-36 have been withdrawn. Claims 6-8, 22, 23, and 27-29 have been rejected.

Applicant has amended claims 6, 7 and 27, and added new claims 47-49. Withdrawn claims 9 and 10 have been amended to depend from claim 6.

No new matter is introduced by this amendment.

Reply to Office action of 09 April 2007

Rejection under 35 U.S.C. §102

Claims 6-7, 22, and 27-29 were rejected under 35 U.S.C. §102(e) as being anticipated by Brandau (U.S. Patent 6,709,379). For the following reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 6, 7, 22, and 27-29.

Claims 6 and 27 have been amended. Claim 6 recites a medical device for implanting in a patient, comprising a device body with an outer surface, an attachment region within the surface, a ceramic component comprising a first porous region, and a second porous region wherein the second porous region is less porous than the first porous region and wherein the ceramic component connects to the attachment region through the second porous region, wherein the attachment region comprises an indentation in the surface. Claim 27 recites a medical device for implanting in a patient comprising: a) a surface comprising a metal; b) at least one attachment region disposed within the surface wherein each attachment region comprises an indentation in the surface; c) at least one ceramic component comprising a glass or ceramic, the ceramic component having a first porous region side and a second less porous region side, wherein the less porous region side of the ceramic component is fused on or within the attachment region; and d) an oxide layer disposed on or within the attachment region between the surface of the device and each of the ceramic components.

The amendment is supported in the specification in Figures 2, 4 and 7 where an indentation in the surface is labeled as the attachment region 115. In addition, further support can be found in Applicant's specification on page 5 at lines 7 -9 which reads "[a]lternatively, an attachment region is formed in the surface 110 by removing material. In those cases, the attachment region 115 is the surface left behind after the material has been removed." New claim 49 depends from claim 6 and is supported by at least by lines 5-7 of page 5, and Figures 2, 4, and 7 of Applicant's originally filed specification. New claim 47 is dependent upon claim 6 and is supported by at least lines 1-4 of page 7 in addition to the above cited sections of Applicant's specification. New claim 48 depends upon claim 27 and is supported by at least lines 11-15 of page 13 of Applicant's specification in addition to the above cited sections.

Reply to Office action of 09 April 2007

The claims as amended are patentably allowable over Brandau. Without regard to whether the Examiner is correct in his assertions that Brandau inherently discloses a metal oxide layer, with a ceramic layer on top wherein the ceramic layer forms a less porous region next to the oxide and a more porous region further from the oxide, Brandau does not disclose an attachment region that is an indentation in the surface. Brandau discloses "the production of the covering layer 6" can be made by "an oxidization of an appropriate surface layer of the support 2." There is no disclosure in Brandau that the "covering layer" is preferentially formed in a cavity or indentation in the surface in contrast to the Applicant's invention where Applicant's figure 4 clearly demonstrates the ceramic component attaches at an attachment region which is an indentation or cavity in the surface. In addition, Brandau's Figure 4 and Figures 5A, 5B and 5C, depicts the covering layer 6 is on top of the substrate surface 2, and not a covering layer in a concave indentation or cavity.

Therefore, Brandau does not disclose the attachment region of claims 6 and 27 which is an indentation in the surface. Accordingly, Brandau cannot anticipate independent claims 6 and 27 and the claims depending therefrom. New claims 47, 48 and 49 depend from claim 6, and are therefore not anticipated by Brandau.

Rejection under 35 U.S.C. §103(a)

Claims 8 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brandau in view of Alt (U.S. Patent 6,099,561). This rejection is now moot, because claims 8 and 23 have been amended to depend from claim 6 and because the rejection of claim 6, as discussed above, is moot in light of the amendments to claim 6.

With respect to withdrawn claims 9-21, and claims 24-26, Applicant requests that the Examiner rejoin these claims. Each claim depends from an allowed base claim and is therefore allowable for at least the same reason. It would not make sense to file a divisional application on dependent claims for which its independent claim has been allowed.

Application No. 10/623,908
Response dated 10 September 2007

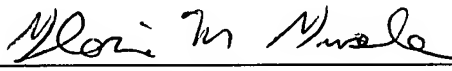
Attorney Docket: 50623.00245
Express Mail No: EV 687 139 687 US

Reply to Office action of 09 April 2007

In light of the foregoing remarks, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested. If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. **07-1850**.

Date: September 10, 2007
SQUIRE, SANDERS & DEMPSEY L.L.P.
One Maritime Plaza, Suite 300
San Francisco, California 94111-3492
Telephone: 415.954.0397

Respectfully submitted,


Gloria M. Gusler, Ph.D.
Reg. No. 50,282
Attorney for Applicant

SANFRANCISCO/225311.3